

COHEN
ZIFFER
FRENCHMAN
& MCKENNA

Andrew Bourne

212.584.1805D
abourne@cohenziffer.com

1350 Avenue of the Americas
New York, NY 10019

212.584.1890 P
212.584.1891 F

October 5, 2021

Via ECF

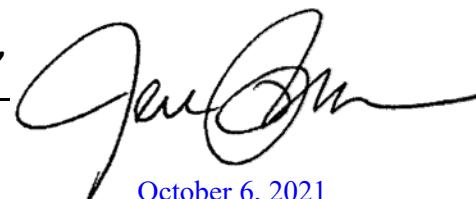
Hon. Jesse M. Furman
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Application GRANTED. Further, the parties shall appear for a conference before the Court on **November 2, 2021, at 3:00 p.m.** In connection with that conference, the parties shall follow all procedures governing an initial pretrial conference, including by submitting a joint letter and a proposed Civil Case Management Plan and Scheduling Order no later than Thursday of the week prior to the conference. *See ECF No. 16.* The Clerk of Court is directed to terminate ECF Nos. 47, 54.

SO ORDERED.

RE: *Liberty Mutual Fire Ins. Co. v. JDS Construction Group LLC,*
Civil Action No. 21-cv-1931(JMF)

Dear Judge Furman:



October 6, 2021

We represent Defendants JDS Construction Group LLC, JDS Construction Services LLC, 111 West 57th Developer LLC, PMG West 57th Street LLC, and 111 Construction Manager LLC, (collectively, the “Defendants”), in the action referenced above (the “Action”). We write to advise the Court that we filed a Notice of Withdrawal of the Defendants’ motion to dismiss under Rule 12(b)(7) as we have come to the conclusion that this matter can properly proceed with 111 West 57th Property Owner LLC (“Property Owner”).

We recently came to appreciate that in Appendix A to the agreement at the center of this dispute – the Pledge and Security Agreement for Guarantee of Deductible and/or Loss Limit Reimbursement #8344 (the “Pledge Agreement”) – the “Policyholder” (which includes the Defendants) waived any right to require Liberty Mutual to proceed against any other insured. As a result, the nonjoinder of Property Owner does not make just resolution of the action impossible, and Defendants have accordingly withdrawn their motion.

In light of the withdrawal of the motion, we respectfully request that the Defendants be given twenty-days from the filing of this letter, until October 25, 2021, to file an answer (and reassert the counterclaim). We have conferred with counsel for Liberty Mutual, who has consented to the withdrawal of the motion to dismiss and to the timing for filing the answer.

As always, we thank Your Honor for your continued attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "ABe".

Andrew Bourne

cc: All Counsel of Record (via ECF)

4841-6260-6078, v. 2